



Agricultural Marketing Service

7 CFR Part 925

[Doc. No.: AMS-SC-21-0049; SC21-925-2]

Amendments to the Marketing Order of Grapes Grown in a Southeastern California

AGENCY: Agricultural Marketing Service (AMS), Department of Agriculture (USDA).

ACTION: Proposed rule and referendum order.

SUMMARY: This rulemaking proposes amendments to Marketing Order No. 925, which regulates the handling of grapes grown in a designated area of southeastern California. The proposed amendments would change the California Desert Grape Administrative Committee's (Committee) size, and its quorum and voting requirements.

DATES: The referendum will be conducted from February 14 through March 4, 2022. The representative period for the referendum is January 1 through December 31, 2021.

ADDRESSES: Interested persons with questions and comments are invited to submit written questions and comments to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; or Telephone: (202) 720-2491.

FOR FURTHER INFORMATION CONTACT: Pushpa Kathir, Marketing Specialist, or Matthew Pavone, Rulemaking Services Branch Chief, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Pushpa.Kathir@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program,

AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j) are proposed. This proposal is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. Part 925 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of grape producers and handlers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. The Agricultural Marketing Service (AMS) has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between

the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposal has also been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering grapes grown in a designated area of southeastern California.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608 (15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed herein are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order.

The Committee unanimously recommended the amendments following deliberations at a public meeting on April 13, 2021. This proposal would amend the Order by changing the Committee's size, and its quorum and voting requirements.

A proposed rule soliciting comments on the proposed amendments was published in the **Federal Register** on August 13, 2021 (86 FR 44644). Two comments were received in support of the proposed amendments, so no changes will be made to the proposed amendments.

AMS will conduct a producer referendum to determine support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments, if they are favored by producers in the referendum.

Proposal 1 – Reduce Committee Size

§ 925.20 provides that the Committee consists of 12 members and, for each member of the Committee, there must be an alternate who has the same qualifications as the member. This proposal would amend § 925.20 by reducing the size of the Committee from 12 to 10 members. The requirement that each member has an alternate with the same qualifications as the member would remain unchanged. Four members and their alternates would be producers or officers or employees of producers (producer members). Four members and their alternates would be handlers or officers or employees of handlers (handler members). One member and alternate would be either a producer or handler or officer or employee thereof. One member and alternate would represent the public.

Since promulgation of the Order in 1980, the California table grape industry has seen reductions of about 55 percent of its producers and 58 percent of its registered handlers, which makes it difficult to find eligible members to fill all positions on the

Committee. Industry consolidation and land development pressure due to conversion of lands for residential and commercial uses have contributed to this decline. Decreasing the Committee's size from 12 members to 10 members would make Committee membership more reflective of today's industry and enable the Committee to fill all its member positions without difficulty.

Proposal 2 – Revise Quorum and Voting Requirements

Currently, § 925.30 states that eight members of the Committee shall constitute a quorum, and any action of the committee shall require at least eight concurring votes.

The proposed change would modify § 925.30 to allow six members to constitute a quorum including, at a minimum, one producer member and one handler member, with six concurring votes required to pass any motion or approve any Committee action.

The Committee is experiencing difficulties filling member seats and obtaining a quorum at meetings to conduct business activities. Adjusting current requirements would enable the Committee to operate fully, mitigating the risk of not establishing a quorum during scheduled meetings and not having the required votes to pass any action. These changes would help to streamline the Committee's operations and increase its effectiveness.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of no more than

\$1,000,000. Small agricultural service firms (handlers) are defined as those with annual receipts of no more than \$30,000,000.

Proposed amendments to the Order would reduce the number of members and alternates seats on the Committee from 12 to 10 and reduce the quorum and voting requirements from 8 to 6 members. These amendments are necessary to reflect the industry's consolidation. Since promulgation of the Order in 1980, the California table grape industry has lost roughly 55 percent of its producers and 58 percent of its registered handlers.

Committee reports that there are 21 producers and 10 handlers of table grapes in the production region. Committee packout reports show that average annual packout for 2018 through 2020 was 3.2127 million 18-pound containers, equivalent to 28,914 tons. The 3-year average of California fresh table grape prices was \$1,267 per ton. Multiplying quantity by price yields an annual average crop value estimate of \$36.634 million. Dividing the average crop value estimate by the number of producers (21) yields an average crop value per producer of \$1.744 million, moderately larger than the SBA small farm size threshold of \$1,000,000. Therefore, using the estimated prices, packout volume, and number of producers and assuming a normal bell-curve distribution of receipts among producers, AMS estimates the majority of producers would qualify as large businesses under the SBA definition.

Dividing the average crop value of \$36.634 million by the number of handlers (10) yields a per-handler estimate of \$3.663 million, well below the SBA small business threshold of \$30,000,000 in annual receipts. However, that computation measures handler annual receipts using producer-level crop value data, since AMS is unable to locate an estimate of a handler margin. A range of handler margin estimates would be 30 to 40 percent above the grower price. Applying those two percentages, a range of handler annual receipts estimates would be \$4.8 to \$5.1 million, still well below

\$30,000,000. Therefore, using these estimated prices, utilization volume, handler margin estimates and number of handlers, AMS estimates that the majority of handlers would meet the SBA definition of small businesses.

AMS has determined that the proposed amendments would not have a significant impact on a substantial number of small businesses. Both large and small entities would be expected to benefit from the Committee's improved ability to address important issues on a timely basis. The proposed reduction in the number of seats on the Committee, and the reduced quorum and voting requirements, would not require any significant changes in producer or handler business operations, and no significant industry educational effort would be needed. Producers and handlers, large and small would incur no additional costs. No small businesses would be unduly or disproportionately burdened.

The Committee unanimously recommended the proposed amendments at a public meeting on April 13, 2021. If these proposals are approved in a referendum, there would be no direct financial effects on producers or handlers. However, these proposed changes would have indirect financial effects - decreased administrative costs to producers and Committee staff stemming from fewer resources required to the annual preparation of multiple nomination notices and meetings, and reduced travel expenses associated with carrying out annual duties.

Since 1980, the number of producers and handlers operating in the industry has decreased, which makes it difficult to find enough members to fill positions on the Committee. Decreasing the Committee's size would make it more reflective of today's industry. No economic impact is expected if the proposed amendments are approved because they would not establish any new regulatory requirements on handlers, nor would they have any assessment or funding implications. There would be no change in financial costs associated with reporting or recordkeeping requirements if this proposal is approved.

Alternatives to this proposal, including making no changes at this time, were considered by the Committee. Due to changes in the industry, AMS believes the proposals are justified and necessary to ensure the Committee's ability to locally administer the program. Reducing the size of the Committee would enable it to satisfy membership, and quorum and voting requirements fully, thereby ensuring a more efficient and orderly flow of business.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California table grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meetings are widely publicized throughout the southeastern California table grape production area. All interested persons are invited to attend the meetings, whether held virtually or in-person, and encouraged to participate in Committee deliberations on all issues. As with all Committee meetings, the April 13,

2021, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposed amendments.

A proposed rule concerning this action was published in the **Federal Register** on August 13, 2021 (86 FR 44644). A copy of the rule was sent via email to the Committee Manager for disposal to all Committee members and California table grape handlers. Finally, the proposed rule was made available by USDA through the Internet and the office of the **Federal Register**. A 60-day comment period ending October 12, 2021, was provided to allow interested persons to respond to the proposal. Two comments were received during the comment period, both of which were in support of the proposed amendments. However, one commentor was concerned that the restructure of the Committee might limit the participation of interested parties in the industry. Further, the commentor suggested adding a requirement for periodic review of the Committee structure to the regulations.

USDA and the Committee encourage the participation of all eligible interested parties in the administration of the Order. The proposed restructuring of the Committee is not intended to limit the participation of individuals on the Committee, but rather to reflect the current industry demographic and to facilitate the ability of the Committee to function moving forward. Furthermore, the Committee has the ability to recommend changes to the Committee structure when it is deemed appropriate, and the addition of a regulatory review requirement is not necessary. As such, no changes will be made to the amendments as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

The findings and conclusions, and general findings and determinations included in the proposed rule set forth in the August 13, 2021, issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled “Order Amending the Order Regulating the Handling of Grapes Grown in a Designated Area of Southeastern California.” This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered that this entire proposed rule be published in the Federal Register.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 through 900.407) to determine whether the annexed order amending the Order regulating the handling of grapes grown in a designated area of southeastern California is approved by growers, as defined under the terms of the Order, who during the representative period were engaged in the production of grapes in the production area. The representative period for the conduct of such referendum is hereby determined to be January 1, 2021, through December 31, 2021.

The agents designated by the Secretary to conduct the referendum are Jeffery Rymer and Gary D. Olsen, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: Jeffery.Rymer@usda.gov or GaryD.Olsen@usda.gov, respectively.

Order Amending the Order Regulating the Handling of Grapes Grown in a Designated Area of Southeastern California¹

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 925; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 925 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 925 as hereby proposed to be amended regulates the handling of grapes grown in a designated area of southeastern California and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 925 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 925 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of grapes produced or packed in the production area; and

5. All handling of grapes produced or packed in the production area as defined in Marketing Order 925 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of grapes grown in a designated area of southeastern California shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator and published in the **Federal Register** (86 FR 44644) on August 13, 2021, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 925 as follows:

PART 925 – GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 925.20, revise paragraph (a) to read as follows:

§ 925.20 Establishment and membership.

(a) There is hereby established a California Desert Grape Committee consisting of 10 members, each of whom shall have an alternate who shall have the same qualifications as the member. Four of the members and their alternates shall be producers, or officers or employees of producers (producer members). Four of the members and their alternates shall be handlers, or officers or employees of handlers (handler members). One member and alternate shall be either a producer or handler, or an officer or employee thereof. One member and alternate shall represent the public.

* * * * *

3. In § 925.30, revise paragraph (a) to read as follows:

§ 925.30 Procedure.

(a) Six members of the committee shall constitute a quorum, including at a minimum one producer member and one handler member, and any action of the committee shall require at least six concurring votes.

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Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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